

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHARON DAILEY,

Plaintiff,

v.

LT. C. RAMOS,

Defendant,

No. 2:23-cv-1541 TLN DB PS

ORDER AND

FINDINGS AND RECOMMENDATIONS

Plaintiff Sharon Dailey is proceeding in this action pro se. This matter was referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). On August 3, 2023, defendant filed a motion to dismiss and noticed the motion for hearing before the undersigned pursuant to Local Rule 302(c)(21). (ECF No. 4.) Pursuant to Local Rule 230(c) plaintiff was to file an opposition or a statement of non-opposition to defendant's motion not less "than fourteen (14) days after the motion was filed." Plaintiff, however, failed to file a timely opposition or statement of non-opposition to the motion.

Accordingly, on September 5, 2023, the undersigned issued an order to show cause, ordering plaintiff to show cause in writing within fourteen days as to why this action should not be dismissed for lack of prosecution, as well as ordering plaintiff to file a statement of opposition or non-opposition to defendant's motion on or before September 29, 2023. (ECF No. 5.) Plaintiff was warned that the failure to timely comply with that order could result in a

1 recommendation that this case be dismissed. (Id. at 2.) Nonetheless, plaintiff has not responded  
2 to the September 5, 2023 order or opposed defendant's motion to dismiss.<sup>1</sup>

3 ANALYSIS

4 The factors to be weighed in determining whether to dismiss a case for lack of prosecution  
5 are as follows: (1) the public interest in expeditious resolution of litigation; (2) the court's need  
6 to manage its docket; (3) the risk of prejudice to the defendant; (4) the public policy favoring  
7 disposition on the merits; and (5) the availability of less drastic sanctions. Hernandez v. City of  
8 El Monte, 138 F.3d 393, 398 (9th Cir. 1998); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir.  
9 1992); Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988). Dismissal is a harsh penalty that  
10 should be imposed only in extreme circumstances. Hernandez, 138 F.3d at 398; Ferdik, 963 F.2d  
11 at 1260.

12 Failure of a party to comply with the any order of the court "may be grounds for  
13 imposition by the Court of any and all sanctions authorized by statute or Rule or within the  
14 inherent power of the Court." Local Rule 110. Any individual representing himself or herself  
15 without an attorney is nonetheless bound by the Federal Rules of Civil Procedure, the Local  
16 Rules, and all applicable law. Local Rule 183(a). A party's failure to comply with applicable  
17 rules and law may be grounds for dismissal or any other sanction appropriate under the Local  
18 Rules. Id.

19 Here, plaintiff has failed to opposed defendant's motion to dismiss and failed to comply  
20 with the September 5, 2023 order. Plaintiff was warned that the failure to file a written response  
21 to that order could result in a recommendation that this matter be dismissed. In this regard,  
22 plaintiff's lack of prosecution of this case renders the imposition of monetary sanctions futile.  
23 Moreover, the public interest in expeditious resolution of litigation, the court's need to manage its  
24 docket, and the risk of prejudice to the defendant all support the imposition of the sanction of  
25 dismissal. Only the public policy favoring disposition on the merits counsels against dismissal.

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26 <sup>1</sup> Although it appears from the docket that plaintiff's copy of the September 5, 2023 order was  
27 returned as undeliverable, plaintiff was properly served. It is the plaintiff's responsibility to keep  
28 the court apprised of plaintiff's current address at all times. Pursuant to Local Rule 182(f),  
service of documents at the record address of the party is fully effective.

1 However, plaintiff's failure to prosecute the action in any way makes disposition on the merits an  
2 impossibility. The undersigned will therefore recommend that this action be dismissed due to  
3 plaintiff's failure to prosecute as well as plaintiff's failure to comply with the court's orders. See  
4 Fed. R. Civ. P. 41(b).

5 Accordingly, IT IS HEREBY ORDERED that defendant's August 3, 2023 motion to  
6 dismiss (ECF No. 3) is denied without prejudice as having been rendered moot.<sup>2</sup>

7 Also, IT IS HEREBY RECOMMENDED that:

- 8 1. Plaintiff's complaint (ECF No. 1) be dismissed without prejudice; and
- 9 2. This action be closed.

10 These findings and recommendations are submitted to the United States District Judge  
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
12 after being served with these findings and recommendations, any party may file written  
13 objections with the court and serve a copy on all parties. Such a document should be captioned  
14 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections  
15 shall be served and filed within fourteen days after service of the objections. The parties are  
16 advised that failure to file objections within the specified time may waive the right to appeal the  
17 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

18 Dated: October 13, 2023

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22 DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

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28 <sup>2</sup> In the event the assigned District Judge does not adopt these findings and recommendations,  
defendant may re-notice the motion for hearing before the undersigned.